

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

PRE-MUR: 473

DATE RECEIVED: June 10, 2008

SUPPLEMENT RECEIVED: July 7, 2008

DATE ACTIVATED: June 24, 2008

EXPIRATION OF SOL: September 26, 2010

COMPLAINANT: Transurban Group (*sua sponte* submission)

RESPONDENTS: Transurban Group  
 Transurban (USA) Inc.<sup>1</sup>

RELEVANT STATUTES: 2 U.S.C. § 441e  
 11 C.F.R. § 110.20(b)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

This matter was initiated by a *sua sponte* submission made to the Federal Election Commission ("the Commission") by Transurban Group, on behalf of itself and its subsidiary, Transurban (USA) Inc. ("Respondents"). In their submission, Respondents admit that they violated 2 U.S.C. § 441e by making contributions or donations with funds provided by a foreign national in connection with a Federal, State, or local election.

<sup>1</sup> While the *sua sponte* submission refers collectively to three related domestic subsidiaries of The Transurban Group as "Transurban USA," two of those entities, Transurban (USA) Operations Inc. and Transurban (USA) Holdings Inc. companies do not appear to have made any political contributions. Based on our review of Virginia state contribution records, the checks provided in the submission, and conversations with the Respondents' counsel, we have concluded that the contributions are attributable to "Transurban (USA) Inc." See <http://www.vpap.org> (search "Donor Search" for "Transurban"). Accordingly, this Office will not make any recommendations regarding the Operations and Holdings companies. Notwithstanding the collective references in the *sua sponte* submission, all references in this report to "Transurban USA" refer to Transurban (USA) Inc.

1    **II.    FACTUAL AND LEGAL ANALYSIS**

2            **A.    Factual Background**

3            Transurban Group ("the Group"), an Australian-based international toll road developer  
4    and manager, began U.S. operations in April 2005 from offices in New York, New York. The  
5    Group established three domestic subsidiaries: Transurban (USA) Operations Inc.,; Transurban  
6    (USA) Holdings Inc.; and Transurban (USA) Inc. ("Transurban USA"). Although the Group  
7    began to generate income from its domestic operations in late 2006, the foreign parent company  
8    remained its predominant source of funds through 2007.

9            Respondents hired a government relations firm, The Vectre Corporation ("Vectre"), to  
10    support its activities in Virginia. Vectre reportedly advised Respondents that the incorporated  
11    U.S. subsidiaries of foreign corporations could make political contributions to state candidates  
12    and state political committees in Virginia. Between September 26, 2005 and February 1, 2008,  
13    Transurban USA made \$174,000 in nonfederal contributions which are listed in the *sua sponte*  
14    submission and in an attachment to this report. (Attach. 1.)

15            In October 2006, a Transurban Group manager raised a question as to the legality of  
16    making nonfederal contributions. In a November 2006 email, Vectre's president advised, "In  
17    Virginia, corporate contributions are allowed under Virginia law for state elections . . . There is  
18    no limit in terms of the amount of contributions." Later that month, he further advised that  
19    Virginia did not require corporations to report political contributions, but added a disclaimer that  
20    "Vectre is not a law firm and does not provide legal services." Based on the information that  
21    Vectre provided, the Board approved a report that advocated continuing its political  
22    contributions policy. *See Attachments to Sua Sponte Submission*

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1 On February 6, 2008, as part of an ethics briefing from an outside law firm on unrelated  
2 federal matters, Transurban USA learned that it could not use funds received from a foreign  
3 parent corporation to make contributions or donations in connection with a Federal, State, or  
4 local election. Transurban USA promptly contacted the Group's general counsel in Australia,  
5 who had joined the company in September 2006 and was unaware of its practice of making such  
6 contributions. On February 7, 2008, Transurban Group began an internal investigation through  
7 Caplin & Drysdale, Chtd., who interviewed officers, employees, and the Board chairman of the  
8 Group and Transurban USA. Caplin & Drysdale also employed a computer forensics firm to  
9 identify and preserve potentially relevant computer records. The investigation concluded that  
10 Transurban USA and Transurban Group had made foreign national contributions but had done so  
11 in mistaken reliance on the advice received from Vectre.

12 On July 7, 2008, Respondents provided a supplemental submission to inform the  
13 Commission that it discovered an additional \$7,000 in contributions, and to detail the remedial  
14 actions it had taken to inform the recipients that the contributions violated federal campaign  
15 finance laws and to request refunds all prohibited contributions. Respondents further stated that  
16 it planned to implement internal controls and processes that would include training on when to  
17 seek appropriate legal advice.

#### 18 B. Analysis

19 At issue is whether Respondents violated 2 U.S.C. § 441e when the U.S. subsidiary made  
20 nonfederal contributions to candidates and political committees in Virginia with funds provided  
21 by the foreign parent corporation. It is unlawful for a foreign national, directly or indirectly, to  
22 make a contribution or donation of money or other thing of value in connection with a Federal,  
23 State, or local election, or to a committee of a political party. 2 U.S.C. § 441e(a)(1)(A), (B); 11

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1 C.F.R. § 110.20(b). Additionally, a foreign national may not directly or indirectly make an  
2 expenditure, an independent expenditure, or a disbursement in connection with a Federal, State,  
3 or local election. 2 U.S.C. § 441e(a)(1)(C); 11 C.F.R. § 110.20(f). Likewise, Commission  
4 regulations prohibit foreign nationals from directing, dictating, controlling, or directly or  
5 indirectly participating in the decision-making process of any person, such as a corporation, with  
6 regard to such person's Federal or nonfederal election-related activities, including decisions  
7 concerning the making of contributions, donations, expenditures, or disbursements in connection  
8 with elections for any Federal, State, or local office. 11 C.F.R. § 110.20(i).

9 A "foreign national" is an individual who is not a citizen of the United States or a  
10 national of the United States and who is not lawfully admitted for permanent residence. 2 U.S.C.  
11 § 441e(b)(2). The term likewise encompasses "a partnership, association, corporation,  
12 organization, or other combination of persons organized under the laws of or having its principal  
13 place of business in a foreign country." 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

14 In determining whether a U.S. subsidiary of a foreign national corporation is permitted to  
15 make contributions to state and local committees, the Commission, in past Advisory Opinions,  
16 has looked at two factors. First, the Commission assesses whether the subsidiary is  
17 predominantly funded by the foreign national such that a contribution by the subsidiary is  
18 essentially a contribution from the foreign national. Second, the Commission considers the  
19 status of the decision-makers involved. In Advisory Opinion 1989-20 (Kuilima), a U.S.  
20 subsidiary of a Japanese company wanted to establish a PAC. However, the subsidiary did not  
21 yet generate income from its projects and obtained "almost all of its funding from loans and  
22 contributions" from the foreign parent company. *Id.* at 1. The AO concluded that the U.S.  
23 subsidiary could not establish the PAC because it derived a predominant source of funds from

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1 the foreign parent company. *Id.* at 2. As to the second factor, the AO stated that "no director or  
2 officer of the company or its parent who is a foreign national may participate in any way in the  
3 decision-making process with regard to making the proposed contributions." *Id.* at 3. *But see*  
4 Advisory Opinion 1985-03 (Diridon) (allowing a committee to receive a contribution from a  
5 U.S. subsidiary whose financial involvement in the U.S. was "substantial").

6 In the present matter, Respondents acknowledge the nonfederal contributions to  
7 candidates for state office and to state political committees violate 2 U.S.C. § 441e. Indeed,  
8 based on the information in the *sua sponte* submission, Transurban USA's activities appear to  
9 violate 2 U.S.C. § 441e because it used funds derived predominantly from its foreign parent  
10 company to make contributions to nonfederal candidates and political committees. Like the  
11 domestic subsidiary in AO 1989-20, Transurban USA had not yet generated enough domestic  
12 income so that its nonfederal contributions to state and local committees could be considered  
13 separate from the foreign parent. Moreover, Transurban Group violated Commission regulations  
14 because its Board of Directors directly participated in determining whether to continue the  
15 political contributions policy of its U.S. subsidiaries. 11 C.F.R. § 110.20(i).

16 The Group, however, asserts that its violations stem from the erroneous advice that  
17 Vectre provided. As the submission notes, Transurban USA originally made political  
18 contributions on an ad hoc basis based on Vectre's recommendations, and continued to rely on  
19 Vectre's supposed expertise to make additional contributions over the next several years. The  
20 Group further asserts that none of the employees involved in the violation were aware they had  
21 violated federal campaign finance laws. Indeed, Vectre had advised the Group that their  
22 activities were entirely legal.

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As outlined in the submission, Respondents have since taken corrective action that included an immediate end to its political activity following discovery of its violations. Further, in a supplement to the submission dated July 7, 2008, Respondents have sought full refunds from the recipients of its contributions. Respondents also noted that they would implement training to help employees identify when legal counsel is needed.

Based on the above, this Office recommends that the Commission find reason to believe that Transurban Group and Transurban (USA) Inc. violated 2 U.S.C. § 441e by making nonfederal contributions to candidates for state office and to state political committees in Virginia that totaled \$174,000 from September 2005 to February 2008.

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**IV. RECOMMENDATIONS**

- 1) Open a MUR;
- 2) Find reason to believe that Transurban Group and Transurban (USA) Inc. violated 2 U.S.C. § 441e; and
- 3)
- 4) Approve the attached Factual and Legal Analysis; and
- 5) Approve the appropriate letter.

Thomaseia Duncan  
General Counsel

9/19/08  
Date

BY: K. H. Guith  
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Attachments:

1. List of Transurban USA State Contributions

**Transurban USA, Inc. Contributions to Virginia Candidates and Committees  
2005-2008**

<b>Amount</b>	<b>Years(s)</b>	<b>Committee Name</b>
\$ 12,500	2005, 2006, 2007, 2008	Dominion Leadership Trust
\$ 12,000	2006, 2007	Republican Party - Virginia Senate Republican Leadership Trust
\$ 10,500	2006, 2007	Democratic Party - Commonwealth Victory Fund
\$ 8,000	2005, 2006, 2007	Seslow for Senate - Richard
\$ 7,500	2006, 2007	Republican Party - Virginia House Campaign Committee
\$ 5,500	2005, 2006, 2007	Stoeck for Senate - Walter
\$ 5,000	2007	Connolly for Fairfax County Board Chair - Gerald
\$ 5,000		Kilgore for Governor*
\$ 5,000	2005, 2006, 2007	Williams for Senate - Martin
\$ 5,000	2006	Kaine for Governor - Tim
\$ 4,500	2006, 2007	Moving Virginia Forward
\$ 4,500	2006, 2007	Stolle for Senate - Kenneth
\$ 4,000	2005, 2006	Wardrup for Delegate - Leo
\$ 3,000	2006, 2007	Moran for Delegate - Brian
\$ 3,000	2006, 2007	Howell for Senate - Janet
\$ 2,500	2006, 2007	Houck for Senate - Edward
\$ 2,500	2006, 2007, 2008	Leadership PAC
\$ 2,000	2007	Democratic Party - Virginia Senate Caucus
\$ 2,000	2007	Colgan for Senate - Charles
\$ 2,000	2006	Democratic Party - Virginia
\$ 2,000	2007	Welch for Delegate - John
\$ 2,000	2007	Va State Legislative Black Caucus
\$ 2,000	2006, 2007	Rust for Delegate - Thomas
\$ 2,000	2007	Watkins for Senate - John
\$ 1,500	2006, 2007	Scott for Delegate - James
\$ 1,500	2006, 2007	Hall for Delegate - Franklin
\$ 1,500	2007	Hamilton for Delegate - Phillip
\$ 1,500	2005, 2006	Chichester for Senate - John
\$ 1,500	2006, 2007	Hugo for Delegate - Timothy
\$ 1,500	2006, 2007	Griffith for Delegate - Morgan
\$ 1,500	2006, 2007	Quayle for Senate - Frederick
\$ 1,500	2006, 2007	Norment for Senate - Thomas
\$ 1,500	2006, 2007	Davis for Senate - Jeannemarie
\$ 1,250	2006, 2007	Cuccinelli for Senate - Kenneth
\$ 1,000	2007	A Strong Majority PAC
\$ 1,000	2007	Bulova for Fairfax County Board of Supervisors - Sharon
\$ 1,000	2006, 2007	Lucas for Senate - Louise
\$ 1,000	2006	Deeds for Senate - Creigh
\$ 1,000	2007	Bell for Senate - Brandon
\$ 1,000	2006, 2007	Abbitt for Delegate - Watkins
\$ 1,000	2007	Whipple for Senate - Mary
\$ 1,000	2007	Republican Party - Virginia Republican Senatorial Committee

\$ 1,000	2006, 2007	Blevins for Senate - Harry
\$ 1,000	2007	Cox for Delegate - Kirdand
\$ 1,000	2006, 2007	Watts for Delegate - Vivian
\$ 1,000	2007	Marsh for Senate - Henry
\$ 1,000	2007	Lambert for Senate - Benjamin
\$ 1,000	2006	McDonnell for Attorney General - Bob
\$ 1,000	2006, 2007	Miller for Senate - Yvonne
\$ 1,000	2007	Ticer for Senate - Patricia
\$ 1,000	2006	Republican Party - Virginia
\$ 1,000	2007	Lingamfelter for Delegate - Scott
\$ 1,000	2007	May for Delegate - Joe
\$ 1,000	2006, 2007	Puckett for Senate - Phillip
\$ 750	2006, 2007	Iaquinto for Delegate - Salvatore
\$ 750	2007	Caputo for Delegate - Carmin
\$ 750	2006, 2007	McDougle for Senate - Ryan
\$ 750	2006, 2007	Shannon for Delegate - Stephen
\$ 750	2006, 2007	Ward for Delegate - Jelon
\$ 750	2006, 2007	Rerras for Senate - Nick
\$ 750	2006, 2007	BaCote for Delegate - Mamyse
\$ 750	2006, 2007	O'Brien for Senate - James
\$ 500	2007	Amundson for Delegate - Kristen
\$ 500	2007	Cosgrove for Delegate - John
\$ 500	2007	Melvin for Delegate - Kenneth
\$ 500	2007	Purkey for Delegate - Bob
\$ 500	2007	Harring for Senate - Mark
\$ 500	2007	Kilgore for Delegate - Terry
\$ 500	2007	Spruill for Delegate - Lionell
\$ 500	2007	Bulova for Delegate - David
\$ 500	2007	Petersen for Senate - Chapman
\$ 500	2006	McEachin for Senate - Donald
\$ 500	2007	Vanderhys for Delegate - Margaret
\$ 500	2007	Frederick for Delegate - Jeffrey
\$ 500	2007	Cole for Delegate - Mark
\$ 500	2007	Putney for Delegate - Lacey
\$ 500	2007	Barker for Senate - George
\$ 500	2007	Pium for Delegate - Kenneth
\$ 500	2007	Tata for Delegate - Robert
\$ 500	2007	Puller for Senate - Linda
\$ 500	2007	Bowling for Delegate - Dan
\$ 500	2007	Nixon for Delegate - Sam
\$ 500	2006	Landes for Delegate - Steven
\$ 500	2007	Martin for Senate - Stephen
\$ 500	2006	Callahan for Delegate - Vincent
\$ 500	2006	Newman for Senate - Stephen
\$ 500	2006, 2007	Deeds for Attorney General - Creigh
\$ 500	2006	Jones for Delegate - Dwight

\$ 500	2008	Reid for Delegate - John
\$ 500	2008	Majority Whip PAC
\$ 500	2007	Albo for Delegate - David
\$ 500	2008	Wampler for Senate - William
\$ 500	2007	McEachin for Delegate - Donald
\$ 500	2007	Hanger for Senate - Emmett
\$ 500	2007	Stuart for Senate - Richard
\$ 500	2007	Joannou for Delegate - Johnny
\$ 500	2007	Janis for Delegate - William
\$ 250	2008	Fralin for Delegate - William
\$ 250	2008	Marsden for Delegate - David
\$ 250	2007	McClellan for Delegate - Jennifer
\$ 250	2008	Valentine for Delegate - Shannon
\$ 250	2007	Sherwood for Delegate - Beverly
\$ 250	2007	O'Bannon for Delegate - John
\$ 250	2007	Englin for Delegate - David
\$ 174,000		TOTAL*

\* Transurban Group identified \$167,000 in political contributions in its initial submission. However, in a supplemental submission dated July 7, 2008, it identified an additional \$7,000 in political contributions, including a \$5,000 contribution to Kilgore for Governor that state public records erroneously recorded as an individual contribution, and a \$2,000 contribution to Saslaw for Senate that failed to appear on state public records but was cashed by the recipient committee.